IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5373 of 1998

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TRIBAL RESEARCH-CUM-TRAINING CENTRE - Petitioner(s)
Versus
SHAILESHKUMAR M DARJI - Respondent(s)

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Appearance :
MR DG CHAUHAN for Petitioner(s) : 1,
MR KS ACHARYA for Respondent(s) : 1 ABSENT,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 20/09/2007

ORAL JUDGMENT

The petitioner-employer has preferred the present petition under Articles 226 and 227 of the Constitution of India against the judgment and award

dated 9th December, 1997 passed by the Labour Court, Godhra in Reference LCG No.244/1990.

The respondent-workman was engaged by the petitioner-Tribal Research and Training Centre (hereinafter referred to as, **"the Centre"**) as a daily rated unskilled labourer in the year 1986. He continued to serve as such till the month of February, 1988. The workman raised industrial dispute in connection with his discontinuance from service with effect from 1st March, 1988. The said dispute came to be referred to the Labour Court, Vadodara and was, thereafter, transferred to the Labour Court, Godhra. According to the statement of the claim filed by the workman, he was engaged on 19th April, 1986 as Gujarati and English Typist. As the workman demanded regular pay-scale, his service came to be terminated on 29th February, 1988. Neither the workman was given notice of termination of service nor the retrenchment compensation. The said claim was contested by the Centre. According to the Centre, the workman was engaged as daily rated unskilled labourer as and when he reported for duty and was paid accordingly; that

he was not engaged as a Typist nor did he do any typing work; that he worked till 22nd February, 1988. Thereafter, he ceased to report at the Centre on his own volition. According to the Centre, the workman had secured employment under the Liquidator appointed under the Gujarat Cooperative Societies Act. He was not interested and, therefore, he left the service at the Centre. The Centre also maintained that the workman had not served for 240 days during the 12 months preceding the termination of his service or in any 12 months during the period of his employment. In support of his claim, the workman relied upon the oral evidence given before the Labour Court and the certificates given by one Shri N.R.Patel. The Centre relied upon the oral evidence and the certificate of employment issued by the Liquidator appointed under the Gujarat Cooperative Societies Act.

The learned Labour Judge held that the service of the workman was terminated without giving him notice or pay in lieu of the notice and without giving him the retrenchment compensation. The Labour Court, therefore, decided the reference in favour of

the workman. The Court directed the Centre to reinstate the workman in service with the benefit of continuity in service and other consequential reliefs and 50% of the backwages. Feeling aggrieved, the Centre has preferred the present petition.

Mr.Chauhan has submitted that although the Centre had raised a categorical plea that the workman had not completed 240 days' service as envisaged by Section 25B of the Industrial Disputes Act, 1947 and that his service was not terminated, the Labour Court has not considered or given its finding in respect of the said plea. Unless the labour Court came to the conclusion that the workman was retrenched from service, the question of notice or retrenchment compensation would not arise. He has also submitted that there was ample evidence that the workman was gainfully employed. Nevertheless, the learned Judge has awarded 50% of the backwages. Mr.Chauhan has also submitted that pursuant to the interim order made pending this petition, the workman was reinstated in service on 17th May, 1999. He served until 25th August, 1999. Since then, he has not reported for duty. In

support of his submissions, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of **J.K.Synthetics Ltd. V/s. K.P.Agrawal and another** [(2007)2 SCC 433].

It is true that one Shri N.R.Patel had given certificates that the workman was engaged in the Centre as a Typist and that his service was satisfactory. The said certificates were issued on 29th July, 1986 and 30th October, 1987. However, the said certificates do not prove that the workman had continuously served and that he had completed 240 days' service in a period of twelve months. The learned Labour Judge has heavily relied upon the said certificates. Without considering the evidence and without recording the finding, whether the workman had completed 240 days' service as envisaged by Section 25B of the Industrial Disputes Act. Without recording a specific finding, whether the workman had left the service on his own volition or whether termination of service of the workman was by the act of the employer, the Court has allowed the claim made by the workman. In absence of a clear finding whether

it was a case of retrenchment, the learned Labour Judge has erred in holding that the service of the workman was terminated without giving him notice or retrenchment compensation. Pending this petition, by interim relief, this Court had, by order dated 28th April, 1999, stayed the award in respect of the payment of backwages alone. It appears that pursuant to the said order, as stated by Mr.Chauhan, the workman was reinstated in service on 17th May, 1999 but once again he has ceased to attend the service since 25th August, 1999. It is evident that the workman is not interested in service.

In above view of the matter, the petition is allowed. The impugned judgment and award dated 9th December, 1997 passed by the Labour Court, Godhra in Reference LCG No.244/1990 is quashed and set-aside. The claim made by the workman stands rejected. Rule is made absolute. Interim relief stands vacated. The parties will bear their own cost.

(Ms. R.M.Doshit, J.)

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